



November 4, 2013

Sen. Rick Jones, Chair
Sen. Tonya Schuitmaker, Sen. Tory Rocca and Sen. Steven M. Bieda
Senate Judiciary Committee
Michigan Senate
Farnum Building, Rm. 110
Lansing, Michigan 48909

RE: HB 4694-4697

Dear Members of the Judiciary Committee:

The Michigan Coalition for Open Government has serious concerns with the proposals to create a secret mental health court system. We oppose this legislation as currently drafted because it would bar the disclosure of relevant information that could be vitally important to the public safety and welfare of Michigan's citizens. This legislation creates yet another secret court system in Michigan with no method for evaluating the successes or failures and hiding from public view and review the activities and decision making of the district and circuit court judges and the SCAO.

Historically in Michigan and throughout the United States, our courts have been open, transparent and accountable to the communities they serve. Secrecy undermines this, inviting collusion and misconduct.

Michigan courts operate under the principle and legal mandate of MCL 600.1420: "***The sittings of every court within this state shall be public*** except that a court may, for good cause shown, exclude from the courtroom other witnesses in the case when they are not testifying and may, in actions involving scandal or immorality, exclude all minors from the courtroom unless the minor is a party or witness. This section shall not apply to cases involving national security." (Emphasis added.) MCL 600.1420; MSA 27A.1420.

None of these exceptions exempt a mental health court system, so this proposal undermines the historic and fundamentally important role of the courts. The United State Supreme Court overwhelmingly ruled in the case of ***Richmond Newspaper, Inc., et al. v. Virginia, et al., (448 U.S. 555 (1980))*** that the public has a First Amendment right to listen and observe court proceedings the better to ensure justice is served and the court operates without bias or favor. The majority opinion states:

"To work effectively, it is important that society's criminal process "satisfy the appearance of justice," and the appearance of justice can best be provided by allowing people to observe it....The First Amendment, in conjunction with the Fourteenth, prohibits governments from "abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." These expressly guaranteed freedoms share a common core purpose of assuring freedom of communication on matters relating to the functioning of government. Plainly it would

be difficult to single out any aspect of government of higher concern and importance to the people than the manner in which criminal trials are conducted; as we have shown, recognition of this pervades the centuries-old history of open trials and the opinions of this Court. ... a trial courtroom also is a public place where the people generally—and representatives of the media—have a right to be present, and where their presence historically has been thought to enhance the integrity and quality of what takes place... We hold that the right to attend criminal trials is implicit in the guarantees of the First Amendment; without the freedom to attend such trials, which people have exercised for centuries, important aspects of freedom of speech and "of the press could be eviscerated."

Michigan's Supreme Court affirmed and endorsed this constitutional right in a series of cases that followed.

Mental health issues were at the root of the mass shootings at schools (Newtown), colleges (Virginia Tech) and even Congressional town hall meetings (Arizona/Giffords). Clearly, there is a need for better treatment and criminal justice options. We support that, but this is not the way..

The legislation as drafted not only hides the initial information from the public but goes much further by **hiding the data collected on its successes, its failures, its rate of recidivism**. No one, not even members of the legislature, would be provided the data. The sole keeper of the information is the SCAO. **Though the SCAO may choose to disclose this information, by law, it would not be required to do so.** This is a major objection for us.

At a minimum, and in our efforts to offer a good faith way to mitigate some of our concerns, the proposed legislation should be amended to require all the data collected and reports issued on the administration of the mental health courts to be public records accessible by the citizens of the state, the legislature and governor and, specifically, not exempt under the FOIA. Further, the mental health court system should operate on a one strike rule--any recidivism on the part of the individual should open the full record to the public.

The Michigan Coalition for Open Government is a tax exempt, Michigan nonprofit corporation founded to promote and protect transparency and accountability in the governments of the people, by the people and for the people at the local, state and federal levels.

Thank you for your time. If you have questions or concerns on this and would like to discuss the matter further, please feel free to contact me at 248-330-9626. Thank you for your consideration.

Sincerely,



Jane Briggs-Bunting
President
Michigan Coalition for Open Government
www.miopengov.org